

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
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W3b



ADMINISTRATIVE PERMIT NUMBER 3-05-022

Applicant.....Mark De Mattei

Project location.....End of Beach Drive in the Aptos area of unincorporated Santa Cruz County (see location map and photos in exhibit A).

Project description...Construct paved driveway access fronted by a faux bluff concrete seawall seaward of a recently approved single-family residence. Project includes an access gate/fence, utility laterals, beach access pathway, landscaping, and related structures (see site plan and cross sections in exhibit B).

Local approvalsSanta Cruz County permit 04-0044.

NOTE: Public Resources Code Section 30624 provides that this administrative coastal development permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs. This permit will be reported to the Commission at the following time and place:

**May 11, 2005, 9:00 AM
Bechtel Conference Center, Encina Hall
Stanford University, Palo Alto, CA**

IMPORTANT: Before you may proceed with development, the following must occur: You must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return to our office (Title 14, California Code of Regulations, Sections 13150(b) and 13158). Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, if applicable, we will send you a Notice of Administrative Permit Effectiveness. **Before you can proceed with development, you must have received both your administrative permit and the notice of permit effectiveness from this office.**

PETER DOUGLAS
Executive Director

By: DIANE LANDRY
Central Coast District Manager

EXECUTIVE DIRECTOR'S DETERMINATION: THE FINDINGS FOR THIS DETERMINATION, AND FOR ANY SPECIAL CONDITIONS, APPEAR BELOW.

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I. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

II. SPECIAL CONDITIONS

- 1. Final Plans.** WITHIN SIXTY DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Final Plans (in full-size and 11" x 17" formats with a graphic scale (two sets of each)) to the Executive Director for review and approval. The Final Plans shall be

prepared by a licensed civil engineer with experience in coastal structures and processes and shall be substantially in conformance with the plans submitted to the Coastal Commission (originally submitted plans as modified by updated site plan and cross section dated received in the Coastal Commission's Central Coast District Office on March 22, 2005 and April 22, 2005 respectively) but shall show the following changes and clarifications to the project via plan notes and/or direct modification:

- (a) **Concrete Surfacing.** All concrete surfaces above an elevation of +3.0 NGVD that are exposed and/or are located on the seaward and/or beachward side of the seawall shall be faced with a sculpted concrete surface that mimics natural undulating bluff landforms in the vicinity in terms of integral mottled color, texture, and undulation. Any protruding concrete elements (e.g., corners, edges, etc.) shall be contoured in a non-linear manner designed to evoke natural bluff undulations.
- (b) **Planter Boxes.** The portion of the four-foot wide landscape area (i.e., the landscape area located inland of the seawall's top edge) nearest to the seawall's top edge shall incorporate a planter box designed to raise the soil elevation nearest the seawall to the elevation at the top of the seawall. The planter box shall be no less than 1.5 feet wide.
- (c) **Landscaping.** All landscaping in the planter box system atop the seawall shall be non-invasive native bluff species capable of trailing vegetation that can screen the exposed portion of the seawall as seen from the beach and Monterey Bay (e.g., Carmel creeper, *Ceanothus griseus* var. *horizontalis*). The plans shall include certification from a licensed landscape professional experienced with native species indicating that all plant species to be used are native and non-invasive. A permanent irrigation system shall be included. The cascading planter box system shall provide for a dense cascading screen of vegetation covering the exposed portion of the seawall above beach sand, or when more than five feet are so exposed, the top five feet of the seawall. All plants shall be replaced as necessary to maintain the required dense cascading screen of vegetation over the life of the project. To allow for initial growth, the required screening shall be initially achieved within at least two years of completion of construction.
- (d) **Drainage.** All drainage within the sculpted concrete shall be camouflaged (e.g., randomly spaced, hidden with overhanging or otherwise protruding sculpted concrete, etc.) so as to be hidden from view and/or inconspicuous as seen from the beach.
- (e) **Existing Rock and Rubble.** All existing rip-rap rock and concrete rubble located within the retained lot that is uncovered during the course of constructing the new seawall (except that that is part of the existing revetment along the side of the existing house to the southwest of the seawall location) located seaward and/or beachward of the seawall location shall be retrieved and used for the seawall back fill or properly disposed of off-site.
- (f) **Signs and Access Obstructions.** The Permittee shall not place signs or access obstructions in the vicinity of the proposed accessway, except as provided for by subsection (h) below and special condition 3.
- (g) **Benchmarks.** One or more permanent surveyed benchmarks inland of the seawall (e.g., a permanently embedded brass cap) shall be installed for use in future monitoring efforts.

Benchmark elevation shall be described in relation to National Geodetic Vertical Datum (NGVD).

- (h) **New Signs.** Any and all signs proposed to be located near the beach path and/or seawall shall be identified on the plans with details on materials, colors, size, location, and text. Any such signs shall not interfere with or otherwise discourage use of the accessway (that extends from the eastern end of Beach Drive to the beach) or the beach itself, and shall be designed so that they are inconspicuous and blend seamlessly into the beach aesthetic.
- (i) **Plan Notes.** Plan note number 1 on the site plan received April 22, 2005 shall be modified by replacing "access to beach" with "access to or from beach." Plan note number 2 on the site plan received April 22, 2005 shall be replaced in its entirety with the following:

2. Guardrails, fences, walls, and gates shall be designed to maximize through views (e.g., spaced metal bars), and shall be designed to minimize visual intrusion through their configuration and materials (i.e., flat-black paint or integral color, weathered metal, etc.). Guardrails atop the seawall shall be cable-rail or equivalent.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake development in accordance with the approved Final Plans. Any proposed changes to the approved Final Plans shall be reported to the Executive Director. No changes to the approved Final Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary

- 2. **Construction Plan.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a Construction Plan (in full-size and 11" x 17" formats with a graphic scale (two sets of each)) to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
 - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, all storage areas, all construction access corridors (to the construction sites and staging areas), and all public access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to minimize construction encroachment on the beach area located seaward and/or beachward of the seawall perimeter, Monterey Bay, and all shoreline access points, and to have the least impact on public access. Unobtrusive fencing (or equivalent) shall be provided to enclose the construction area in a closed polygon (as seen in site plan view).
 - (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from Monterey Bay waters and public recreational use areas (including using Beach Drive right-of-way space for staging, storage, and construction activities to the maximum extent feasible). All erosion control/water quality best management practices to be implemented during construction and their location shall be noted.

- (c) **Property Owner Consent.** The Construction Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including any properties to be crossed in accessing the site, consent to the use of their properties in these manners.
- (d) **Construction Coordinator.** The Construction Plan shall identify a designated construction coordinator to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and in emergencies). The coordinator's contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be provided. The Construction Plan shall require that the construction coordinator record the name, phone number, and nature of all complaints received regarding the construction, and that the construction coordinator investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (e) **Construction Requirements.** The Construction Plan shall, at a minimum, include the following construction requirements specified via written notes on the Plan. Minor adjustments to the following construction requirements may be allowed by the Executive Director if such adjustments: (1) are deemed necessary due to extenuating circumstances; and (2) will not adversely impact coastal resources.
- All work shall take place during daylight hours; lighting of the beach and Monterey Bay waters is prohibited.
 - All construction activities shall take place inland of Monterey Bay waters and the intertidal area (i.e., the beach area between high and low tides); contact with Monterey Bay waters and/or intertidal areas is prohibited with one exception for intertidal contact (only) as follows: existing rip-rap rock that is naturally exposed in the intertidal area when Monterey Bay waters have receded, and that can be retrieved without contact with Monterey Bay waters and without substantial excavation of the surrounding sediments, shall be retrieved and reused or removed to an appropriate disposal site offsite. Any existing rock retrieved in this manner shall be recovered by excavation equipment positioned as far landward of the waterline as possible (i.e., excavator equipment with mechanical extension arms).
 - Only rubber-tired construction vehicles are allowed on the beach, except track vehicles may be used if the Executive Director agrees that they are required to safely carry out construction. When transiting on the beach, all such vehicles shall remain as high on the upper beach as possible and avoid contact with ocean waters and intertidal areas.
 - All construction materials and equipment placed on the beach area located seaward and/or beachward of the seawall perimeter during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from the beach area located seaward and/or beachward of the seawall perimeter by sunset on each day that work occurs. The only exceptions shall be for erosion and sediment controls (e.g., a silt fence at the base of the wall) as necessary to contain sediments at the site, where such controls are placed as close to the toe of the seawall as possible, and are minimized in their extent.

- Particular care shall be exercised to prevent foreign materials (e.g., construction scraps, concrete, concrete rinsate, etc.) from getting onto the beach area located seaward and/or beachward of the seawall perimeter and/or into Monterey Bay waters.
- Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
- No work shall occur on the beach area located seaward and/or beachward of the seawall perimeter during weekends or holidays.
- Equipment washing, refueling, and/or servicing shall not take place on the beach.
- The construction site shall maintain good construction site housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach).
- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each work day. At a minimum, silt fences and/or equivalent apparatus shall be installed at the perimeter of the construction site to prevent construction-related runoff and/or sediment from entering into the Monterey Bay.
- All beach areas located seaward and/or beachward of the seawall perimeter and all shoreline access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand in the area located seaward and/or beachward of the seawall perimeter that is impacted by construction shall be filtered as necessary to remove all construction debris.
- All contractors shall insure that work crews are carefully briefed on the importance of observing the construction precautions given the sensitive work environment. Construction contracts shall contain appropriate penalty provisions sufficient to offset the cost of retrieval/clean up of foreign materials not properly contained.
- The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction and required beach-area restoration activities. If planning staff should identify additional reasonable measures necessary to restore the beach and beach access points, such measures shall be implemented immediately.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Permittee shall undertake construction in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 3. Construction Site Documents.** DURING ALL CONSTRUCTION, copies of each of the following shall be maintained in a conspicuous location at the construction job site at all times (where such copies shall be available for public review) and all persons involved with the construction shall be briefed on the content and meaning of each prior to commencement of construction: (a) the signed coastal development permit; (b) the approved final plans (see special condition 1); and (c) the approved construction plan (see special condition 2). In addition, the designated construction coordinator's contact information (including their address and 24-hour phone number at a minimum) shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies).
- 4. As-Built Plans.** WITHIN SIX-MONTHS OF COMPLETION OF CONSTRUCTION, the Permittee shall submit As-Built Plans (in full-size and 11" x 17" formats with a graphic scale (two sets of each)) to the Executive Director for review and approval. The As-Built Plans shall clearly identify in site plan and cross-section: all development completed pursuant to this coastal development permit; all property lines; and all residential development inland of the seawall structure. The As-Built Plans shall include color photographs (in hard copy and jpg format) that clearly show the as-built project, and that shall be accompanied by a site plan that notes the location of each photographic viewpoint and the date and time of each photograph. At a minimum, the photographs shall be from upcoast, seaward, and downcoast viewpoints, and from a sufficient number of beach viewpoints as to provide complete photographic coverage of the seawall and residence at a scale that allows comparisons to be made with the naked eye between photographs taken in different years and from the same vantage points. The As-Built Plans shall be submitted with certification by a licensed civil engineer with experience in coastal structures and processes, acceptable to the Executive Director, verifying that the project has been constructed in conformance with the approved project plans described by special condition 1 above.
- 5. Monitoring and Reporting.** The Permittee shall ensure that the condition and performance of the as-built project is regularly monitored by a licensed civil engineer with experience in coastal structures and processes. Such monitoring evaluation shall at a minimum address whether any significant weathering or damage has occurred that may adversely impact performance, or that may reduce the effectiveness of the camouflaging treatment applied (i.e., the sculpted concrete and/or vegetation). Monitoring reports prepared by a licensed civil engineer with experience in coastal structures and processes, and covering the above-described evaluations, shall be submitted to the Executive Director for review and approval at five year intervals by May 1st of each fifth year (with the first report due May 1, 2010, and subsequent reports due May 1, 2015, May 1, 2020, and so on) for as long as the approved project exists at this location. The reports shall identify any recommended actions necessary to maintain the approved project in a structurally sound manner and its approved state, and shall include photographs taken from each of the same vantage points as required in the as-built plans (see special condition 4) with the date and time of the photographs and the location of each photographic viewpoint noted on a site plan.
- 6. Future Maintenance Authorized.** This coastal development permit authorizes future maintenance subject to the following:

- (a) **Maintenance.** "Maintenance," as it is understood in this special condition, means development that would otherwise require a coastal development permit whose purpose is to repair, reface, and/or otherwise maintain the approved seawall structure in its approved configuration.
- (b) **Maintenance Parameters.** Maintenance shall only be allowed subject to the approved construction plan required by special condition 2. Any proposed modifications to the approved construction plan associated with any maintenance event shall be identified in the maintenance notification (described below), and such changes shall require a coastal development permit amendment unless the Executive Director deems the proposed modifications to be minor in nature (i.e., the modifications would not result in additional coastal resource impacts).
- (c) **Construction Coordinator.** A construction coordinator shall be identified, and their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, shall be provided with the maintenance notification (described below).
- (d) **Other Agency Approvals.** The Permittee acknowledges that these maintenance stipulations do not obviate the need to obtain permits from other agencies for any future maintenance and/or repair episodes.
- (e) **Maintenance Notification.** At least two weeks prior to commencing any maintenance event, the Permittee shall notify, in writing, planning staff of the Coastal Commission's Central Coast District Office. The notification shall include a detailed description of the maintenance event proposed, and shall include any plans, engineering and/or geology reports, proposed changes to the maintenance parameters, other agency authorizations, and other supporting documentation describing the maintenance event. The maintenance event shall not commence until the Permittee has been informed by planning staff of the Coastal Commission's Central Coast District Office that the maintenance event complies with this coastal development permit. If the Permittee has not received a response within 30 days of submitting the notification, the maintenance event shall be authorized as if planning staff affirmatively indicated that the event complies with this coastal development permit. The notification shall clearly indicate that the maintenance event is proposed pursuant to this coastal development permit, and that the lack of a response to the notification within 30 days constitutes approval of it as specified in the permit.
- (f) **Maintenance Coordination.** Maintenance events shall, to the degree feasible, be coordinated with other maintenance events proposed in the immediate vicinity with the goal being to limit coastal resource impacts, including the length of time that construction occurs in and around the beach area, Monterey Bay area, and shoreline access points. As such, the Permittee shall make reasonable efforts to coordinate the Permittee's maintenance events with other adjacent events, including adjusting maintenance event scheduling as directed by planning staff of the Coastal Commission's Central Coast District Office.
- (g) **Non-compliance Proviso.** If the Permittee is not in compliance with the conditions of this permit at the time that a maintenance event is proposed, then the maintenance event that might otherwise be allowed by the terms of this future maintenance condition shall not be allowed by this condition until the Permittee is in full compliance with this permit.

(h) Emergency. Nothing in this condition shall serve to waive any Permittee rights that may exist in cases of emergency pursuant to Coastal Act Section 30611, Coastal Act Section 30624, and Subchapter 4 of Chapter 5 of Title 14, Division 5.5, of the California Code of Regulations (Permits for Approval of Emergency Work).

(i) Duration of Covered Maintenance. Future maintenance under this coastal development permit is allowed subject to the above terms for five (5) years from the date of approval (i.e., until May 11, 2010). Maintenance can be carried out beyond the 5-year period if the Permittee requests an extension prior to May 11, 2010 and the Executive Director extends the maintenance term. The intent of the permit is to regularly allow for 5-year extensions of the maintenance term unless there are changed circumstances that may affect the consistency of the development with the policies of Chapter 3 of the Coastal Act and thus warrant a re-review of the permit.

7. Shoreline Development Stipulations. By acceptance of this permit, the Permittee acknowledges and agrees to, on behalf of itself and all successors and assigns, the following:

(a) Maintenance Required. It is the Permittee's responsibility: (1) to maintain the approved project in a structurally sound manner and its approved state; (2) to repair any damage to the camouflaging treatment applied (i.e., the sculpted concrete and/or planter box system and vegetation screen) as soon as is feasibly possible; (3) to ensure that the accessway (from Beach Drive to the beach) fronting the seawall remains passable by pedestrians, including repairing any damage to the accessway as soon as is feasibly possible; and (4) to immediately remove all debris that may fall from the residential area inland of the seawall onto the seawall, accessway, beach, or Monterey Bay.

(b) Native Non-Invasive Plant Species Only. Non-native and/or invasive plant species shall be prohibited in the planter boxes atop the seawall.

(c) No Further Seaward Encroachment. Any future development, as defined in Section 30106 ("Development") of the Coastal Act, including but not limited to modifications to the seawall, shall be constructed inland of, and shall be prohibited seaward of, the seaward plane of the approved concrete facing with the following development excepted from this prohibition: (1) appropriately permitted construction activities associated with construction, maintenance, and/or repair of the project approved by this coastal development permit; and (2) standard shoreline access maintenance activities.

(d) Assumption of Risk, Waiver of Liability and Indemnity Agreement. The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (1) that the site is subject to extreme coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, landsliding, and coastal flooding; (2) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (3) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (4) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement

arising from any injury or damage due to such hazards; and (5) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.

(e) **Future Shoreline Planning.** The Permittee agrees, on behalf of itself and all successors and assigns, to participate in future shoreline armoring planning efforts that involve the seawall approved pursuant to this coastal development permit. Such planning efforts may involve consideration of a shoreline armoring management entity meant to cover the larger shoreline that includes the seawall, and may involve consideration of potential modifications and/or programs designed to reduce public viewshed and shoreline access impacts due to shoreline armoring. Agreeing to participate in no way binds the Permittee (nor any successors and assigns) to any particular outcome of such planning efforts or to any financial commitment; and in no way limits his/her ability to express his/her viewpoint during the course of such planning efforts.

(f) **Use of the Accessway.** The Permittee shall not interfere with or otherwise discourage use of the accessway (that extends from the eastern end of Beach Drive to the beach) or the beach itself.

8. **MBNMS Review.** PRIOR TO CONSTRUCTION, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the project as approved by this coastal development permit have been granted by the Monterey Bay National Marine Sanctuary. Any changes to the approved project required by the Sanctuary shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

9. **Deed Restriction.** WITHIN SIXTY DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description and site plan of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. EXECUTIVE DIRECTOR'S DETERMINATION

The Executive Director hereby determines that the proposed development is a category of development that qualifies for approval by the Executive Director through the issuance of an administrative permit (Public Resources Code Section 30624). Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, and will not

have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

IV. FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION

1. Project Location

The proposed development is located at Hidden Beach (i.e., the area roughly bounded by the Beach Drive and Via Gaviota residential communities) directly adjacent to the end of Beach Drive in the unincorporated Aptos area of south Santa Cruz County (see location maps and project area photos in exhibit A). Beach Drive is not a through road, and is partially public (on the upcoast portion) and partially private, marked by a locked gate, on its downcoast side. The pre-Coastal Act Beach Drive and Via Gaviota neighborhoods are located at the base of the coastal bluff on an area that was historically beach. Shoreline armoring fronts the entire seaward side of the Beach Drive and Via Gaviota developments. Upcoast is Aptos Creek and State Parks' Seacliff State Beach unit, and downcoast is the Seascape Resort area. Offshore is the Monterey Bay National Marine Sanctuary – the largest of the twelve such federally protected marine sanctuaries in the nation.

2. Project Background

The proposed development site is part of Hidden Beach, an area accessed inland from Hidden Beach County Park via a beach access trail just downcoast of the site, and accessed up and downcoast from along the beach itself (again, see exhibit A). This beach area has historically been a very popular visitor destination. When significant residential development and an extension of Beach Drive were proposed onto Hidden Beach in the late 1990s, the Commission's Public Access Program began an investigation into whether an implied dedication or prescriptive right of access had been established on part or all of the subject property.¹ The investigation showed that Hidden Beach, the bluffs, and portions of the arroyo along the beach access trail appeared to have been used by the public for many years as if public. Based on this information, the Commission pursued formal prescriptive rights litigation through the courts. Ultimately, the Commission and the then property owners entered into a settlement agreement on June 16, 2003 (see exhibit C). Sometime thereafter the current property owner (i.e., the project Applicant) acquired the property.

Pursuant to the terms of the settlement agreement, development is to be confined on a single L-shaped retained parcel (primarily bluff and beach, and a portion of the existing road) of 12,400 square feet (8,400 sq.ft. of bluff and beach, and 4,000 sq.ft. of existing Beach Drive), with all other property subject to the agreement (including the Hidden Beach sandy beach area and a portion of the adjacent arroyo) to be conveyed to the public in return (about 10 acres of undeveloped beach, bluff, and arroyo); see settlement agreement in exhibit C, and see annotated area plan on page 3 of exhibit A for identification of the retained (private) and conveyed (public) properties). In sum, and in return for dedicating the 10

¹ California law provides that, under certain conditions, public access across privately owned property may result in the establishment of a permanent public easement. This easement is variously characterized as being established by "prescriptive rights" or an "implied dedication." The goal of a prescriptive rights investigation is to gather enough information about the subject property to accurately detail the property's history and use status. The initiation of a prescriptive rights investigation is not a judgment that a "prescriptive right" exists or probably exists. Rather, the outcome of such investigation will determine whether there is a sound factual basis for making a claim of prescriptive rights.

acres to the public, the settlement allowed for a single-family home to be constructed within the bluff with a driveway extension from Beach Drive to gain access to it; armoring to protect the driveway was also allowed. Because the coastal permit jurisdictional boundary runs roughly along the toe of the coastal bluff at this location, the settlement thus provided for development both in the Commission's retained coastal permit jurisdiction (essentially the driveway and related development on the beach) and development in the County's jurisdiction (the residence).

3. Project Description

In March 2005 Santa Cruz County approved a residential project including an extension of Beach Drive to gain access to it. That approval was appealed to the Commission on the basis that the project was inconsistent with both the settlement agreement and the LCP (appeal number A-3-SCO-05-023; see exhibit D). Also in March, the Applicant submitted the related coastal development permit application to the Commission for the portion of the project located in the Commission's retained jurisdiction. Shortly thereafter, Commission staff began a series of meetings with the Applicant designed to address the appeal and settlement agreement issues. Those meetings culminated with the Applicant modifying his project application to the Commission, including agreeing to the conditions of approval now included in this administrative permit (see exhibit E); conditions that are similar to those generally applied in Santa Cruz County by the Commission in cases involving shoreline armoring.

The project as now proposed in the Commission's jurisdiction retains all development within the confines of the retained private parcel by means of a faux bluff faced concrete seawall (see site plan and cross section in exhibit C). The project also includes parameters for ensuring the seawall will be screened with native vegetation and made to look as natural as possible, and includes provisions for: construction and maintenance by the Permittee of a beach access pathway to and from Beach Drive; restrictions against interfering with public use of the pathway; minimizing visual intrusion of fences, gates, guardrails, etc.; maintenance to take place on an as needed basis, subject to construction and restoration criteria; long-term monitoring; assumption of risk by the property owner; construction criteria to limit impacts on beach area resources during construction; and recordation of a deed restriction.

The seawall should be only minimally visible during most times of the year (due to sand elevations), and it will be further camouflaged by concrete facing made to look like the surrounding bluffs and by non-invasive native landscaping designed to trail down over the top of the wall. The project also includes provisions for a beach access pathway and for see-through minimally intrusive fencing at the driveway boundary itself.

4. Coastal Act Consistency

The main issues raised by this application are consistency with the shoreline hazards and public access policies of the Coastal Act (Sections 30210-30214 and 30235). The project proposes a concrete seawall in a beach area for a house that is not yet built, although Santa Cruz County has approved a coastal development permit for the residence that is currently on appeal to the Commission. As discussed above, the project is the result of a negotiated settlement agreement between the Commission and the previous property owners that provides for over 10 acres of beach and uplands to be transferred to public ownership (again see exhibit C and page 3 of exhibit A). In exchange, the Commission agreed to the construction of a single family residence with, to the extent necessary to support the development of a

home in this location, a driveway extension from Beach Drive and a minimal protective structure extended from the existing rock revetment immediately upcoast of the project site. There is also a public sewer line under the beach where the driveway will be constructed that already has rip-rap protecting a manhole. The proposed wall will extend from the existing adjacent revetment to and just beyond the rock protecting the sewer facility. This project thus implements a part of the settlement agreed to by the Commission. To the extent that there are any resource impacts from the proposed wall construction necessary to support the driveway, these are mitigated by the dedication of the ten acres of beach and uplands to the public, as well as the special conditions agreed to by the Applicant. Thus, as conditioned, and in the context of the settlement agreement that provides for the public dedication, the project can be found consistent the Coastal Act.

5. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the proposed project, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed project will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

V. ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Signature of Applicant

Date of signing